

AMENDED IN SENATE JULY 13, 2009

AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1343

**Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Ma and Torlakson)**

February 27, 2009

An act to add Chapter 5 (commencing with Section 48700) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1343, as amended, Huffman. Solid waste: architectural paint: recovery program.

Existing law prohibits the disposal of latex paint in the land or waters of the state and authorizes certain persons to accept latex paint for recycling.

The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would create an architectural paint recovery program that would be enforced by the board. On or before January 1, 2011, a manufacturer or designated stewardship organization would be required to submit to the board an architectural paint stewardship plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of postconsumer architectural

paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal. The plan would be required to contain specified elements of an architectural paint stewardship program, including, but not limited to, an architectural paint stewardship assessment, approved by the board, on each container of architectural paint sold in this state. The bill would require the plan to be reviewed and approved by the board, and if the board does not act on the plan within 90 days of receipt, it would be deemed adopted.

This bill would require, on or before July 1, 2011, or two months after a plan is approved by the board, the manufacturer or stewardship organization to implement the architectural paint stewardship program described in the approved plan.

The bill would also prohibit a manufacturer or retailer from selling or offering for sale architectural paint to any person in this state, unless the manufacturer is in compliance with this act. The prohibition would be in effect on the 120th day after a notice listing the manufacturer as not being in compliance is posted on the board's Internet Web site.

This bill would authorize the board to administratively impose civil penalties for violations of the act. The bill would require manufacturers to submit a report to the board by July 1, 2012, and each year thereafter, describing their paint recovery efforts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Architectural paint is a priority waste type based on its high
- 4 volume, subsequent cost to manage, and high potential for
- 5 increased recovery, reuse, and recycling.
- 6 (b) The Department of Toxic Substances Control has deemed
- 7 latex paint as presumed hazardous in California and oil-based paint
- 8 is characteristically hazardous, making both latex and oil-based
- 9 paints prohibited from disposal in California.
- 10 (c) The California Integrated Management Waste Board
- 11 estimates that architectural paint, both latex and oil-based,
- 12 comprises the largest volume of waste product collected at publicly
- 13 operated household hazardous waste facilities, 35 percent of total

1 household hazardous waste collected in California in the 2007–08
2 fiscal year.

3 (d) The Department of Toxic Substances Control estimates that
4 the cost to manage waste architectural paint in California is the
5 single largest cost to local governments in the household hazardous
6 waste system.

7 (e) The board estimates that for the 2007–08 fiscal year only 5
8 percent of California households utilized a household hazardous
9 waste program.

10 (f) Architectural paint is convenient to buy and inconvenient to
11 recycle or legally dispose of in California.

12 (g) There has been an ongoing debate on how to better manage
13 leftover architectural paint since 1989 when the board heard an
14 item on options to fund a collection and management system.

15 (h) A national dialogue has been ongoing since 2002, yet has
16 not resulted in any architectural paint collection or financial relief
17 to California local governments.

18 (i) California has the largest number of latex paint recyclers in
19 the country: Amazon Environmental (Riverside), Kelly-Moore
20 (Sacramento), and Visions (Sacramento).

21 (j) State procurement of recycled paint is required. The state
22 agency “buy recycled” mandates are not being met, and there is
23 no enforcement mechanism, resulting in only 2 percent compliance
24 reporting to the board.

25 ~~(k) The board adopted an Overall Framework for an Extended~~
26 ~~Producer Responsibility (EPR) guidance document as a policy~~
27 ~~priority in January 2008.~~

28 ~~(l) The EPR framework recognizes that the responsibility for~~
29 ~~the end-of-life management of discarded products and materials~~
30 ~~rests primarily with the producers, thereby incorporating costs of~~
31 ~~product collection, recycling, and disposal into the total product~~
32 ~~costs so as to have a reduced impact on human health and the~~
33 ~~environment.~~

34 SEC. 2. Chapter 5 (commencing with Section 48700) is added
35 to Part 7 of Division 30 of the Public Resources Code, to read:

36
37 CHAPTER 5. ARCHITECTURAL PAINT RECOVERY PROGRAM

38
39 48700. The purpose of the architectural paint recovery program
40 established pursuant to this chapter is to require paint

1 manufacturers to develop and implement a program to collect,
2 transport, and process postconsumer paint to reduce the costs and
3 environmental impacts of the disposal of postconsumer paint in
4 this state.

5 48701. For purposes of this chapter, the following terms have
6 the following meanings:

7 (a) “Architectural paint” means interior and exterior architectural
8 coatings, sold in containers of five gallons or less for commercial
9 or homeowner use, but does not include *aerosol spray paint* or
10 architectural coatings purchased for industrial or original equipment
11 manufacturer use.

12 (b) “Board” means the California Integrated Waste Management
13 Board.

14 (c) “Consumer” means a purchaser or owner of architectural
15 paint, including a person, business, corporation, limited partnership,
16 nonprofit organization, or governmental entity.

17 (d) “Distributor” means a person that has a contractual
18 relationship with one or more manufacturers to market and sell
19 architectural paint to retailers.

20 (e) “Manufacturer” means a manufacturer of architectural paint.

21 (f) “Postconsumer paint” means architectural paint not used by
22 the purchaser.

23 (g) “Retailer” means a person that sells architectural paint in
24 the state to a consumer. A sale includes, but is not limited to,
25 transactions conducted through sales outlets, catalogs, or the
26 Internet or any other similar electronic means.

27 (h) “Stewardship organization” means—~~the~~ *a* nonprofit
28 organization created by the manufacturers to implement the
29 architectural paint stewardship program described in Section 48703.

30 48702. (a) A manufacturer of architectural paint sold in this
31 state shall, individually or through a stewardship organization,
32 submit an architectural paint stewardship plan to the board to
33 develop and implement a recovery program to reduce the
34 generation of postconsumer architectural paint, promote the reuse
35 of postconsumer architectural paint, and manage the end-of-life
36 of postconsumer architectural paint, in an environmentally sound
37 fashion, including collection, transportation, processing, and
38 disposal.

1 (b) (1) A manufacturer or retailer shall not sell or offer for sale
2 in this state architectural paint to any person in this state unless
3 the manufacturer is in compliance with this chapter.

4 (2) The sales prohibition in paragraph (1) shall be effective on
5 the 120th day after the notice described in subdivision (c) lists the
6 manufacturer on the board's Internet Web site and shall remain in
7 effect until the manufacturer is no longer listed on the board's
8 Internet Web site.

9 (c) (1) On July 1, 2011, and on January 1 and July 1 annually
10 thereafter, the board shall post a notice on its Internet Web site
11 listing manufacturers that are not in compliance with this chapter.

12 (2) *Manufacturers that have been listed on the board's Internet*
13 *Web site pursuant to this section, but can demonstrate to the*
14 *satisfaction of the board that they are in compliance with this*
15 *chapter before the next notice is required pursuant to this section,*
16 *may request a certification letter from the board to that effect. The*
17 *letter shall constitute compliance with this chapter.*

18 (d) A wholesaler or a retailer that distributes or sells architectural
19 paint shall monitor the board's Internet Web site to determine if
20 the sale of a manufacturer's architectural paint is in compliance
21 with this chapter.

22 48703. (a) On or before January 1, 2011, a manufacturer or
23 designated stewardship organization shall submit an architectural
24 paint stewardship plan to the board.

25 (b) (1) The plan shall demonstrate sufficient funding for the
26 architectural paint stewardship program as described in the plan,
27 including a funding mechanism for securing and dispersing funds
28 to cover administrative, operational, and capital costs, including
29 the assessment of charges on architectural paint sold by
30 manufacturers in this state.

31 (2) The funding mechanism shall provide for an architectural
32 paint stewardship assessment for each container of architectural
33 paint sold by manufacturers in this state and the assessment shall
34 be remitted to the stewardship organization, if applicable.

35 (3) The architectural paint stewardship assessment shall be
36 added to the cost of all architectural paint sold to California
37 retailers and distributors, and each California retailer or distributor
38 shall add the assessment to the purchase price of all architectural
39 paint sold in the state.

1 (4) The architectural paint stewardship assessment shall be
2 approved by the board as part of the plan, and shall be sufficient
3 to recover, but not exceed, the cost of the architectural paint
4 stewardship program.

5 (c) The plan shall address the coordination of the architectural
6 paint stewardship program with local household hazardous waste
7 programs, including contracting for the costs for architectural paint
8 collected by the household hazardous waste programs, where
9 practical.

10 (d) *The plan shall include goals established by the manufacturer*
11 *or stewardship organization to reduce the generation of*
12 *postconsumer paint, to promote the reuse of postconsumer paint,*
13 *and for the proper end-of-life management of postconsumer paint,*
14 *including recovery and recycling of postconsumer paint, as*
15 *practical, based on current household hazardous waste program*
16 *information. The goals may be revised by the manufacturer or*
17 *stewardship organization based on the information collected for*
18 *the annual report.*

19 ~~(d)~~

20 (e) The plan shall include consumer, contractor, and retailer
21 education and outreach efforts to promote the source reduction
22 and recycling of architectural paint. This information may include,
23 but is not limited to, developing, and updating as necessary,
24 educational and other outreach materials aimed at retailers of
25 architectural paint. These materials shall be made available to the
26 retailers. These materials may include, but are not limited to, one
27 or more of the following:

28 (1) Signage that is prominently displayed and easily visible to
29 the consumer.

30 (2) Written materials and templates of materials for reproduction
31 by retailers to be provided to the consumer at the time of purchase
32 or delivery, or both. Written materials shall include information
33 on the prohibition of improper disposal of architectural paint.

34 (3) Advertising or other promotional materials, or both, that
35 include references to architectural paint recycling opportunities.

36 ~~(e)~~

37 (f) On or before July 1, 2011, or two months after a plan is
38 approved pursuant to Section 48704, the manufacturer or
39 stewardship organization shall implement the architectural paint
40 stewardship program described in the approved plan.

1 48704. (a) The board shall review and approve the architectural
2 paint stewardship plan within 90 days of receipt. A plan not acted
3 upon by the board within 90 days shall be deemed adopted.

4 (b) The board shall review the annual report required pursuant
5 to Section 48705 and within 90 days of receipt shall adopt a finding
6 of compliance or noncompliance with the provisions of this act.

7 (c) The board shall enforce this chapter.

8 (d) The stewardship organization shall pay the board
9 administrative fees in the amount of ____ dollars (\$____) when
10 the plan is submitted for review and approval and thereafter an
11 annual administrative fee of 0.05 percent of the architectural paint
12 stewardship program costs as reported under Section 48705.

13 (e) (1) A civil penalty may be administratively imposed by the
14 board on any person who violates this chapter in an amount of one
15 thousand dollars (\$1,000) for each violation.

16 (2) Any person who intentionally, knowingly, or negligently
17 violates this chapter may be assessed a civil penalty by the board
18 of up to ten thousand dollars (\$10,000) for each violation.

19 (3) Any penalties collected by the board shall be used to offset
20 the cost of the review and approval architectural paint stewardship
21 plans and annual reports and of enforcement activities.

22 48705. By July 1, 2012, and each year thereafter, a
23 manufacturer of architectural paint sold in this state shall,
24 individually or through a representative stewardship organization,
25 submit a report to the board describing its architectural paint
26 recovery efforts. At a minimum, the report shall include all of the
27 following:

28 (a) The total volume of architectural paint sold in this state
29 during the preceding calendar year.

30 (b) The total volume of postconsumer architectural paint
31 recovered in this state during the preceding calendar year.

32 (c) A description of methods used to collect, transport, and
33 process postconsumer architectural paint in this state.

34 (d) The total cost of implementing the architectural paint
35 stewardship program.

36 (e) An evaluation of how the architectural paint stewardship
37 program's funding mechanism operated.

38 (f) Examples of educational materials that were provided to
39 consumers the first year and any changes to those materials in
40 subsequent years.

1 ~~48706. Any action taken by a manufacturer or representative~~
2 ~~stewardship organization regarding the cost recovery system or~~
3 ~~the collecting, transporting, or processing of postconsumer~~
4 ~~architectural paint, pursuant to the requirements of this chapter~~
5 ~~and only to the extent necessary to plan and implement the cost~~
6 ~~recovery system, collection system, or recycling system, is not a~~
7 ~~violation of the Cartwright Act (Chapter 2 (commencing with~~
8 ~~Section 16700) of Part 2 of Division 7 of the Business and~~
9 ~~Professions Code), the Unfair Practices Act (Chapter 4~~
10 ~~(commencing with Section 17000) of Part 2 of Division 7 of the~~
11 ~~Business and Professions Code), or any other state law relating to~~
12 ~~antitrust, regulation of trade, or regulation of commerce.~~